



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

March 20, 1947

Hon. George H. Sheppard
Comptroller of Public
Accounts
Austin, Texas

Opinion No. V-95

Re: Under Sec. 2, Article
4344, R.C.S., may Com-
ptroller change rule re-
garding assessment of
poll tax by County Tax
Collector?

Dear Sir:

You have requested the opinion of this department as to whether or not under the provisions of Section 2, Article 4344, Revised Civil Statutes of Texas, the present State Comptroller of Public Accounts may change the long standing rule and regulation adopted by his department, which required the County Tax Assessor to assess all poll taxes at the time of the rendition of other property by the taxpayers and to place such assessments on the regular tax rolls at the time regular assessments are made.

You have advised that due to the present method of assessment and payment of taxes in large cities of this State where property taxes are paid by loan companies for the account of the taxpayer, which payment, however, does not include all taxes owed by the taxpayer, the State has been forced to pay a double fee to the County Tax Assessors and encumber the record by showing the name on the delinquent rolls.

The proposed rule and regulation will provide that the County Tax Assessor shall assess all poll taxes at the time of payment by the taxpayer.

Section 2, Article 4344, R. C. S., is as follows:

"Among other duties the Comptroller shall:

"2. Adopt such regulations not inconsistent with the constitution and laws as he may deem essential to the speedy and proper assessment and collection of the revenues of the State."

Section 3, Article 7, of the Constitution of Texas, is in part as follows:

"One-fourth of the revenue derived from the State occupation taxes and poll tax of one dollar on every inhabitant of the State, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools."

Neither the Constitution nor the statutes of Texas provide any specific method of assessing poll taxes, save the reference in Article 7209, R. C. S. (supplemental roll) which provides in part as follows:

"Collectors of taxes of counties, cities and towns, when any taxpayer applies to them to ascertain the amount of his taxes, and the collector finds that his name or his property does not appear on the tax roll, shall assess said taxpayer then and there, collect the taxes and enter the same upon a supplemental tax roll to be made by him . . . The tax collector shall receive the following compensation for his services on all assessments made by him under this Act, to wit: . . . and for assessing the poll tax, five cents for each poll; which fee shall be paid in the same way as the tax assessor's fee in Article 3937."

Therefore, the opinions of the higher courts of Texas, which interpret Section 3 of Article 7, of the Constitution, should be decisive of the question as to whether the proposed rule and regulation to be adopted by the Comptroller of Public Accounts would be inconsistent with the Constitution and laws of Texas.

The Court of Criminal Appeals in *Solon v. State*, 114 S. W. 349, 359, on rehearing, held in part as follows:

" . . . Under this provision of section 3, art. 7, of the Constitution above quoted

there is, in express terms, levied in this state a poll tax on every male inhabitant thereof between the ages named therein; and if this section of the Constitution is to control, such poll tax is fixed without the necessity of legislative action. The provision standing alone, is definite, fixed and as certain as any legislative action can make it (Emphasis added)

In the case of Parker v. Busby, et al (Civ. App.) 170 S. W. 1042, 1045, it was held as follows:

"The sixth assignment complains that the judgment is contrary to the law and the evidence in this: The name of neither of the plaintiffs appears on the tax rolls of Hardin county for the year 1913, and, such being the case, before defendant, as tax collector, would be authorized to issue to them poll tax receipts for said year, it was necessary for each of them to render his poll and property taxes to defendant in order that he might place the same upon a supplemental tax roll, which the uncontradicted evidence shows that each of the plaintiffs failed to do." (Emphasis added)

The Court then construed Article 7567, Revised Statutes, new Article 7209, R. C. S. 1925, supra, and further stated:

"It is manifest, we think, that the assessment by the collector as provided in this article has reference to the assessment of property only, and not to the assessment of poll taxes. The only reference to poll taxes is at the conclusion of the article, where it is provided what compensation the collector shall receive for assessing taxes, stating in that connection that he shall be allowed five cents for each poll tax assessed. But even if the assessment of a poll tax is necessary in order to enforce-ment of the collection of it, we do not think that such an assessment is necessary in order for a taxpayer to force the collector to accept the amount levied by law upon him as a poll tax and to issue to him a receipt therefor. The words 'poll tax' mean a tax upon the

person - a capitation tax - and in this state such tax is levied by law upon all male persons between 21 and 60 years of age, with certain exceptions not necessary to be here stated. Revised Statutes, Art. 7354. If it is necessary to assess poll taxes, then the law made it the duty of the collector in this instance to make the assessment when the collector ascertained that the names of the plaintiffs did not appear on the tax roll, and he cannot charge upon the poll taxpayer the consequences of his neglect or failure to do so." (Emphasis added)

From the foregoing authorities it is evident that there being no specific provision contained in either the Constitution or laws of this State which specifies the time for the assessment of poll taxes, the proposed rule and regulation requiring the County Tax Assessor to assess such taxes at the time of payment, not being inconsistent therewith, would be a valid rule and regulation.

SUMMARY

The Comptroller of Public Accounts may adopt a rule and regulation under Section 2, Article 4344, R. O. S., providing that all poll taxes shall be assessed by the County Tax Assessor at the time of payment.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

C. K. Richards

By

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Assistant

OKR:mrj

APPROVED MAR. 20, 1947

Price Daniel
ATTORNEY GENERAL